

VZCZCXRO0176
PP RUEHMA RUEHPA
DE RUEHOS #0253/01 1001807
ZNR UUUUU ZZH
P 101807Z APR 07
FM AMCONSUL LAGOS
TO RUEHZK/ECOWAS COLLECTIVE PRIORITY
RUEHUJA/AMEMBASSY ABUJA PRIORITY 8557
RUEHC/SECSTATE WASHDC PRIORITY 8731
INFO RUEHBJ/AMEMBASSY BEIJING 0094
RUEHWR/AMEMBASSY WARSAW 0262
RUEHCD/AMCONSUL CIUDAD JUAREZ 0242
RUEHIT/AMCONSUL ISTANBUL 0241
RUEHSO/AMCONSUL SAO PAULO 0243
RUFOADA/JAC MOLESWORTH AFB UK
RUEKJCS/SECDEF WASHINGTON DC
RUCPDO/DEPT OF COMMERCE WASHDC
RHMCSUU/DEPT OF ENERGY WASHINGTON DC
RUEATRS/DEPT OF TREASURY WASHDC
RUEAIIA/CIA WASHINGTON DC
RHEFDIA/DIA WASHINGTON DC

UNCLAS SECTION 01 OF 02 LAGOS 000253

SIPDIS

SENSITIVE BUT UNCLASSIFIED - HANDLE ACCORDINGLY
SIPDIS

DOE FOR GPERSON, CGAY
TREASURY FOR ASEVERENS, SRENENDER, DFIELDS
COMMERCE FOR KBURRESS
STATE PASS USTR FOR ASST USTR FLISER
STATE PASS TRANSPORTATION FOR MARAD
STATE PASS OPIC FOR ZHAN AND MSTUCKART
STATE PASS TDA FOR NCABOT
STATE PASS EXIM FOR JRICHTER
STATE PASS USAID FOR GWEYNAND AND SLAWAETZ

E.O. 12958: N/A
TAGS: [ASEC](#) [EPET](#) [NI](#) [PTER](#) [ENERG](#)
SUBJECT: PROGRESS ON OIL AND GAS-RELATED LEGISLATION HALTED
BY RECESS

REF: LAGOS 0097

LAGOS 00000253 001.2 OF 002

Sensitive But Unclassified; Handle Accordingly

1. (SBU) Before the five-week recess was called unexpectedly on March 21 by the National Assembly, observers predicted pending legislation of interest to the oil and gas industry would pass before the legislature adjourned sine die on May 29. Now however, observers decline to predict what bills may be reached. According to Victor Olaiya, Manager for Government and Business Relations, ExxonMobil, bills passed by one house carry over to the next session of the National Assembly, while legislation that has not passed either house lapses and must be reintroduced. Bills which have a direct impact on the industry are:

-- Downstream Gas Act: According to Olaiya, the industry, through the Oil Producers Trade Section (OPTS) of the Lagos Chamber of Commerce, has provided input to the House of Assembly and Senate Committees considering the legislation. The industry-advocated amendments urge independence for the downstream regulatory agency, and transparency throughout the downstream regulatory process. ExxonMobil believes the amended legislation is acceptable to the industry. Although both the House and the Senate have held hearings on and amended the bill, neither Committee has reported the bill for consideration by the full House or Senate. (Ref) Olaiya believes that given the effort both houses have put into this bill, it is possible that at least one Committee may report the bill out in time for that house to take action before the May 29 adjournment.

-- Fiscal Regime: Two bills to amend the Petroleum Profits Tax Act and the Company Income Tax Act (CITA) have been under consideration by Committees of the National Assembly, according to Dr. Tim Okon, General Manager, Development Planning, ExxonMobil. The bill drafted by the Federal Inland Revenue Service (FIRS) would grandfather the consolidation of gas costs against income received from oil for both projects on the ground and planned, and provides for a date by which grandfathering would end. Current law does not allow the consolidation, as the National Petroleum Investment Management Services (NAPIMS) recently reminded international oil companies (IOCs), some of whom had been using the consolidation method of computing tax based on informal assurances from NAPIMS that the method was acceptable. The FIRS bill would also allow a lower tax of 30 percent for gas projects. The second bill, the Nigeria Associated Gas Federal Revenue Act (NAGFRA) provides for an "r-factor" tax rate computed by dividing cumulative revenue minus taxes paid by cumulative capital expenditures plus operating expenditures. This bill, which was submitted by NNPC Managing Director Funsho Kupolokun and is supported by the President, would tax the income from add-on projects at a higher rate than the original project, creating a disincentive to produce gas. The House of Assembly has passed the FIRS bill and OPTS members have been working with the Senate on the bill which is now on third reading. Because the FIRS bill has already passed the House of Assembly, it will carry over to the next session of the National Assembly whether or not the Senate takes action before adjournment; absent action by the House or Senate, the OPTS bill would have to be reintroduced for the new National Assembly to consider it.

-- Local Content: The industry worked hard to make changes

LAGOS 00000253 002.2 OF 002

in this legislation, which was not acceptable as originally drafted. Olaiya said "perhaps 95 percent" of the industry's suggestions have been incorporated into the draft. Importantly, the industry managed to have criminal sanctions for noncompliance with local content targets excised from the bill. The Senate appointed an attorney as a consultant to the Committee considering the legislation, which allowed the Committee to complete consideration and vote the legislation out for consideration by the full Senate. The House of Assembly has not yet considered the bill. Unless the Senate acts before adjournment, this legislation will have to be reintroduced.

12. (SBU) OPTS is watching a number of bills which also have an impact on the industry, including:

-- Nigerian Extractive Industries Transparency Initiative (NEITI): The legislation has been passed by both the House, and the Senate passed the legislation in mid-March following a final study tour to the United Kingdom in February. According to Dr. Bright Okogu, Executive Secretary of the NEITI Secretariat and Special Assistant to the Minister of Finance, the House and Senate bills must be reconciled by a conference committee, but according to Olaiya, the bill is "as good as passed." Even if no action is taken prior to adjournment, the legislation will carry over for consideration by the newly elected National Assembly when it reconvenes. Olaiya noted the industry has had an opportunity to provide input during the drafting of the legislation and is satisfied with the bills. The Senate bill provides for penalties of not less than naira 30 million (approximately USD 238,000) for any extractive industry company which gives false information to the government regarding its production, sales or income.

-- Fiscal Responsibility: According to Olaiya, the industry is monitoring the progress of the legislation to forestall the possibility of any unintended negative impact, but believes that the legislation is a positive step toward

fiscal responsibility for Nigeria. The legislation clarifies inter-governmental fiscal relations and the role of the executive and legislative branches in the budgetary process, sets out transparency requirements, sanctions for non-compliance, guidelines for budgetary practices and a fiscal framework based on oil price. Although the Senate has passed the legislation, the House of Assembly has not yet acted, according to press reports. Because the bill has been passed by one house, the legislation will carry over for consideration by the subsequent National Assembly.

13. (SBU) Even before the recess, members had been increasingly absent from National Assembly meetings as they engaged in election-related activities, making achieving a quorum in committee and in the full House and Senate increasingly difficult, both Tim Okun and Paul Foster, Gas and Power Commercial Manager for ExxonMobil, pointed out. According to Kingsley Onukwe, Special Assistant to the Senate President, similar scheduling difficulties are likely to plague the scant four week session between May 2 and May 29.

BROWNE